SPEECHES

OF

Senators Collamer, Trumbull, Seward, Hale, Fessenden, and Harlan.

Delivered in the United States Senate, February 14, 1859.

Mr. COLLAMER. It is, Mr. President, with me, especially at this stage of the session, an unpleasant task to trouble the Senate by occupying any time, for I hardly expect to obtain much attention, in relation to this topic. I have desired that the Legislature of the State of Indiana might have an opportunity of being heard through the men whom they have sent here to represent them. I desired that they should be heard through their own agents; through their own organs, and heard upon the very question which the Senator from Delaware seems to suppose has been decided by a decision which is *res adjudicata*, and, as I understand him, incapable of revision; or, if capable of revision, possessing such infallibility that the Senate will not permit anybody to be heard about it. Inasmuch as the course taken here now is with an evident and avowed intention to prevent their being heard at all, I cannot permit the subject to pass by entirely in silence. If the State of Indiana cannot be heard by her proper organs, I suppose she must be heard, if at all, by improper ones.

I was one of the minority of the Judiciary Committee who concurred in the minority report presenting our views. I do not ask the Senate to take up time by reading that report, although it embodies a brief of the argument of these gentlemen in support of their right. I do not ask the Senate now to listen indirectly, by the reading of that report, to an argument which they do not choose to hear directly; but I must be permitted to say a word or two.

I cannot regard it as true that a decision made by either House of Congress in relation to a member's right to a seat is conclusive. The power of the Senate to judge of the elections and qualifications of its members is not exhausted by once resolving upon the subject. It is an abiding and continuing power. I do not hold that an election, in itself unlawful, can be made lawful by a resolution of the Senate. The Senate does not, by a resolution, make an election; it merely expresses an opinion upon the legality of an election; but the power to judge still remains in no way exhausted. Such a continuing power is absolutely necessary to us. Suppose it were suggested to us that a member sitting here had once, if you please, obtained a resolution in his favor by a set of forged, simulated, and fraudulent papers, by which we had been imposed upon; must not the Senate have the power to revise its decision? Most unquestionably. I do not present that as a case parallel to this. I merely cite it for the purpose of showing the absolute necessity of the existence and continuance of the power of revision.

The first question that arises is, has the Senate the power of revision or re-examination of its decisions? On that I do not choose to take up any more time. In the next place, what is the proper occasion on which they will put in exercise this power? When will they do it? I take it, whenever they are addressed respectfully by a body of people who have the right to be represented in the Senate, and are asked to make a re-examination, they should do it; and if that body, who had the right to elect, considering that there has been no election, make one, and send it here to be examined into, contending that the former election was illegal and the present legal, it is the duty of the Senate to examine it candidly and fairly. If they do not find any different presentation of facts, they may affirm their former decision. If they find a manifest difference, or if they find on examination that they themselves have been mistaken—mistaken as to a matter of fact, or as to a matter of law, on the consequence of what took place—I take it they will correct that mistake, and they ought to have the eandor to correct it. They at least ought not, I think, to assume the ground that they have made an infallible decision, and that they are unwilling to correct it, and unwilling even to hear the subject argued. The claim of infallibility does not become any human being. We are all fallible creatures.

Nor, sir, is the present case at all without precedent. I cannot but regard the precedent which was cited here before, of the Mississippi members of the House of Representatives, as perfectly in point on this subject. On that occasion, Messrs. Claiborne and Gholson were elected, at a special election, members of the House of Representatives for the Twenty-fifth Congress, there being a special session. When the session came, their rights to seats were objected to. The question was sent to a committee, and the ground taken was, that the Governor had no power to call a special election for the purpose of of electing members to a called session of Congress; that members could only be elected at a regular legal election. On examination, however, the committee reported that those members thus chosen by the people were elected to, and were entitled to seats as members of, the Twenty-fifth Congress—the whole Congress. They took their seats as members of the Congress.

This was in September. In November afterwards, came the regular election of the State; and the people elected two different men, Mr. Word and Mr. Prentiss. They came to the other House with their credentials, and claimed their seats. The subject was taken up, re-examined, argued at great length, and the House revised its former decision, and rescinded the first resolution. This was done by the very House of Representatives which had decided, by a resolution placed upon record, the question of the election of these members. There was no new fact involved in the second decision. There had been a new election in the mean time, in despite, as gentlemen here would say in contempt, of the decision of the House; but the people made the election, and sent different persons here. On that occasion the House of Representatives did not refuse to examine into the subject. It was insisted that no new matter could be shown in relation to the right of Messrs. Gholson and Claiborne to their seats; but still the House re-examined the subject, and rescinded the former resolution entirely. And why? Because they found they had been mistaken in relation to the legal consequences and effects of the election. They had decided them to be entitled to the seats as members of the Twenty-fifth Congress, when they were not entitled to them. The result was, that the election was sent back to the people again; but of that part of the case I have nothing now to say, for it is not involved here.

Now, Mr. President, the question is, have the Senate the right and power, and is it their duty, when respectfully applied to, to re-examine their decision in relation to the seats of Senators? I think they have the power. I think they should perform it. Whether, when the examination has been made, and the State of Indiana has been heard in relation to that point, the Senate will reaffirm their former decision, it is not now for me to say. All I ask is, that the subject may be fairly and candidly examined.

Mr. TRUMBULL. Mr. President, it seems to be determined to force a debate on this question, without allowing the Senators elected from Indiana to be heard, or even an opportunity to the Senate to vote upon the question of whether they shall be heard. It seems to be assumed that the matter is decided. Well, sir, I suppose that assumption would prevent a hearing in any case, but that is the very question in controversy. According to the report of the majority of the committee, the question in controversy is, whether it has been decided. The State of Indiana says it has not been decided; her Senators elected say it has not been decided; a minority of the members of the Committee on the Judiciary say it has not been decided; but the majority say it has been decided, and therefore they will not hear; they will hear no argument upon that question. Why, sir, that is begging the whole question. It will be very difficult for any man to ascertain in this case what has been decided. The extraordinary spectacle was presented here at the last session of Congress, of admitting to their seats two gentlemen, as Senators from one of the States of this Union, without any report from the committee upon which the action of the Senate was based, giving them their seats. No reasons were given for coming to such a conclusion.

The majority of the committee contented themselves by simply reporting a resolution declaring the gentlemen entitled to seats, without giving any reasons for arriving at that conclusion. The majority of the Committee on the Judiciary, who have now presented this report, do not pretend that the decision made last year was right. They place it upon no such ground. The honorable chairman of the committee who presents the report will not rise in his place and say the decision was right; but a decision made without a reason is not to be interposed as an obstacle to overturning what I believe to have been an unconstitutional decision. Senators were admitted to their seats a year ago, in violation of the Constitution, illegally, and that not controverted by the report of the committee; and we cannot reach it and correct the wrong! Shelter is to be taken behind this impregnable wall of *res adjudicata*. Why, sir, what has been decided? The State of Indiana, it is said, has insulted the Senate of the United States, has undertaken to revise a decision of the Senate. Will it be said that the State of Indiana is not asserting her constitutional right? It is all she seeks to do; and is she to be treated as having insulted the Senate of the United States, when she claims and asserts her constitutional rights, and asks nothing more?

Mr. PUGH. Who made any such statement?

Mr. TRUMBULL. The report, to which the Senator from Ohio is a party, does not say the sitting members were legally admitted. It places the whole case upon the ground that a resolution of the Senate, adopted at a former session, awarded them seats.

Mr. PUGH. I should take that to be a legal admission.

Mr. TRUMBULL. Yes, sir; and it would make the Senate of the United States the constituents of the sitting Senators, and not the sovereign State of Indiana. Do you place it upon that ground? You refuse to open the case; you refuse to hear the State of Indiana; you refuse to hear her Senators whom she has sent here; and upon what ground? Because the Senate of the United States has adopted a resolution; not because it is right. If this committee had reported that the former decision was correct, that there was no reason for re-examining it, that the case had been decided rightfully, and the Senate refused further to investigate it, that would be one thing; but that is not pretended. The Senator from Delaware will not rise in his place, and say that the former decision was right; but a decision having been obtained, right or wrong, and, as the Senator from Vermont well remarked, no matter even if it were upon forged papers, the fact that the decision is made is an insurmountable obstacle in the way of the assertion of her constitutional rights by one of the sovereign States of the Union.

Now, sir, we deny that this case has been decided. I made the objection last year, that no reasons were given for the conclusion at which the committee had arrived. If there had been, we could have seen the ground on which the decision was made, and could determine at a glance whether anything new was now introduced into the case. But the main reason which was given in argument by Senators for allowing the sitting Senators to hold their seats at that time, has

vanished now. What was the reason, so eloquently dwelt upon by the Senator from Georgia, [Mr. TOOMBS,] and the Senator from Louisiana, [Mr. BENJAMIN?] Let us see if that reason exists now. The Senator from Louisiana said:

"*The State of Indiana has sent us no contest of the right of her Senators on this floor.* No one of her public bodies, either executive, legislative, or judicial, has asked us to inquire into the fact of their election. Certain men in the State have asked us to investigate it, and we ought to investigate it when complaint is made by men who themselves come here with clean hands and pure lips; but when they come here, after having themselves been guilty of the very violence and the very fraud which produded the irregularities of which they complain, I, for one, say that I know of no rule of justice, of no provision of law, that compels us to give ear to their complaints; and, for one, I am not willing to do it."—*Congressional Globe, Thirty-fifth Cong., First sess., page* 2930.

He was not willing to hear last year. Why? Because the Legislature of Indiana had not complained. He would not give ear to those who protested then. Why? Because their lips were polluted. He will not hear now, because he decided last year that he would not hear then. That is the reason—first do a wrong, and then take shelter behind it, so as not afterwards to be right. This was the reason why the sitting Senators were admitted to their seats—the only substantial reason there was. It was alleged as a reason by the Senator from Louisiana at the time, and by the Senator from Georgia with still greater warmth. The Senator from Georgia said:

"We have the highest evidence of the legislative department of Indiana, but we are asked to go behind that. Where shall we go? To a faction? I will not speak of them as I think of them. I have denounced them when they were with me. I spare my opponents the deep indignation which I feel for the traitorous violation of their oaths and the Constitution of my country. I say I will spare my opponents, though I did not spare my friends on a like occasion. Who comes here? Is there a contestant? None. Is Indiana here, protesting against this election, through her executive, legislative, or judicial departments? Not at all; these gentlemen speak for her. Not one of her departments contests their authority. Who are the men that do? They are traitorous, perjured wretches."

That was the reason why he would not hear then. He said, further:

"A part of the members of the Legislature come here and say, 'We did not participate in the election; the Constitution gives the power to elect to the Legislature; we are a part of the Legislature, and we had nothing to do with it, because we wanted to defeat the great right of our sovereign State to be represented in the Senate of the United States. We have been without one Senator two years, and should be without another one for two years, unless an election was made at this time; cannot you, honorable Senators of the United States, representatives of sovereign States, help us to perpetrate this iniquity?' It would go hard with me if I could not find some place to cheat such scoundrels, and to defeat their schemes. I would lay my hand on the law, as long as it stood by me, and then I do not know whether I should not be provoked to stand on principles of eternal justice before I could submit to it. It is not right. I would not submit to it, I care not who did it."

There is the principle upon which the sitting Senators were admitted to their seats last session, because there were scoundrels who objected to their being admitted. Sir, the Constitution of the United States tells us who shall elect Senators. It says, in so many words, that each State shall be entitled to two Senators, "to be chosen by the Legislature thereof." The State of Indiana declares that her Legislature shall consist of two Houses—a Senate and a House of Representatives. The sitting Senators from that State came here elected by the House of Representatives alone, against the solemn protest of the Senate of Indiana. A faction in the Senate, less than half its members, tumultuously, irregularly, and disorderly, left the body, and united with certain members, less than a quorum, of the House of Representatives, and made the election. They were the faction. The Senate as an organized body, a quorum being present, resolved that they would have nothing to do with any such pretended election. That body passed a solemn resolution, in organized Senate, by a vote of twenty-seven to twenty, repudiating the whole concern. They did it in advance, before the day when the sitting Senators were elected. It was pretended that there was to be an adjourned joint convention of the two Houses, when in fact the two Houses had never agreed to meet together for any purpose. The Senate, as a body, hearing of the outrage intended to be perpetrated, passed a resolution declaring that they would have nothing to do with any such irregular joint meeting of members. This was done in a full Senate, only three members being absent. Not only was a quorum there, but nearly the whole body was there, participating in the passage of that resolution, voting for or against it.

Then, sir, when it was found impossible to sustain the claims of the Senators from Indiana upon constitutional principles, when they came here, elected not by the Legislature of Indiana, which is made up of two bodies, but by one of those bodies and a fraction from the other, the extraordinary means were resorted to to keep them here, by asserting that the Senate of Indiana should not be heard; that it was not one of the departments of the Government of Indiana. It was just as good a department as that which sent the Senators here; it was one of the component parts of the Legislature. It is true, it was not the whole Legislature; but it was a co-ordinate branch of it; and because it insisted upon its right of an election of United States Senators, by the concurrent action of each branch, in its organized capacity, and refused to go into a joint convention for that purpose, a majority of its members were denounced on this floor as scoundrels. Sir, what would be a fitting term to apply to the minority of the Senate, who, in a revolutionary and unconstitutional manner, undertook to perfect an election, when such terms are applied to the majority?

I know there is a pretence that the members in Indiana assembled legally; and what is it? The pretence is, that the Constitntion of the State of Indiana requires the Speaker to open and publish the votes for Governor, in the presence of both Houses of the General Assembly. That was done early in January. The returns for Governor of Indiana were sent to the Speaker of the House of Representatives, who, early in Jannary, opened them, and declared the result; and his having done so affords a satisfactory reason to the Senator from Ohio for a joint meeting of less than a quorum of either House, and less than half the members of the Senate, some time in February, in defiance of a resolution of the Senate, to make United States Senators.

But, says the Senator from Ohio, each House of Congress, by the Constitution, is made the judge of the qualifications, elections, and returns, of its members, and the Senate have decided this question. Why, sir, what sort of power is it that is conferred on the Senate to decide as to the elections, qualifications, and returns, of its members? Is it a plenary authority? Can it make such decision as it pleases? Can it decide that, as a qualification, a man must be fifty years of age,

when the Constitution of the United States requires him to be but thirty? Not at all. Can it decide that an election has been held when none has been held? Can the Senate of the United States make an election of members? It can simply decide upon the regularity or irregularity, and ascertain the facts, to see whether a person comes up to the qualification prescribed. The Senate can inquire if a gentleman sent here is thirty years of age; but it cannot elect him a Senator if he is but twenty-nine. Such an act would be utterly void. Where there has been no election, the Senate has no jurisdiction. There has never been an election of Senators in Indiana, for the present terms, until the present Legislature made it, a few weeks since. The body authorized to elect Senators had never undertaken to elect till then. There was nothing to found a decision upon; there was no jurisdiction in the Senate to decide, at the time it gave seats to the sitting Senators. A court might as well undertake to decide a case of which it had no jurisdiction, either of the subject-matter or of the parties, as for the Senate to make a decision at its last session, that should be binding upon the State of Indiana, and upon the gentlemen who present their claims here at this time.

But the Senator from Ohio, finding the decision of the House of Representatives in his way, in the case of Claiborne and Gholson, from Mississippi, seeks to remove that out of the way, because the constituencies of members of the House of Representatives are different from the constituencies of Senators. Does that alter the principle at all? He goes on to say that the members of the House of Representatives are elected by a popular vote, and it is sometimes difficult to ascertain how the popular vote is. Has that anything to do with the question of *res adjudicata* on which he is relying to shield himself in this case, and to protect a decision made by the Senate at its last session? Well, sir, the House of Representatives did not put their decision on any such point as that. He tells us that the House did not reverse its former decision. I tell you it did reverse its decision; and, for the satisfaction of that Senator, I will refer him to the document which shows that fact. In the sixth volume of the *Congressional Globe*, at page 150, I find in the proceedings of the Twenty-fifth Congress:

"Mr. BELL now modified his amendment, as follows:

"Strike out all after the word '*Resolved*,' and insert: 'That the resolution of this House, of the 3d of October last, declaring that Samuel J. Gholson and John F. H. Claiborne were duly elected members of the Twenty-fifth Congress, be rescinded, and that Messrs. Gholson and Claiborne are not duly elected members of the Twenty-fifth Congress.'"

That resolution was adopted, by a vote of 119 yeas to 112 nays, as an amendment to the then pending resolution, which was, that Messrs. Prentiss and Word were not entitled to seats. This was adopted as an amendment, and subsequently was concurred in by the House of Representatives by a decided vote. The case from Mississippi, so far as relates to the binding force of a former decision, cannot be distinguished from the present one. That the Senate may have a distinct statement of what the case in Mississippi was, I will read from the argument of Mr. Bronson, of New York, upon that subject, where he states, in very few words, precisely what the case was; and he advances the same doctrine which the Senator from Ohio and the Senator from Delaware now insist upon, though he was not quite so confident as the Senator from Delaware is. He was willing to hear and to discuss the question. Here is what he said:

"A more solemn judicial decision was never made by this House."

That is, then, the decision made at a previous session, declaring Gholson and Claiborne duly elected members of the Twenty-fifth Congress. He then goes on with the case:

"At the very commencement of the extra session, even before the members were sworn, an objection was made to the right of the sitting members to seats in this House. At the earliest practicable moment the matter was referred to the Committee of Elections, who were directed to inquire and report as to their credentials, and '*whether they are members of the Twenty-fifth Congress, or not.*'

"The committee examined into the matter, and reported, on the 18th September, that they were duly elected members of the Twenty-fifth Congress, and, as such, were entitled to their seats. This resolution was fully debated for many days, on both sides of the question; and after mature deliberation and full discussion, the House adopted the resolution, on the 3d October, by a vote of 118 to 101.

"This resolution *declares the fact* that Messrs. Claiborne and Gholson are duly elected members of the Twenty-fifth Congress; and its adoption is a judicial decision of this House, which is the highest and only tribunal for the settlement of such matters."

I wish to put that to the Senator from Delaware. Judge Bronson, although he argued and insisted upon the former decision as a settled one, says:

"If I doubted the propriety or correctness of that decision, I shall feel very unwilling to shield it now under the plea of '*res adjudicata*.'"

I ask the Senator from Delaware if he does not doubt the correctness and the propriety of the former decision of this body, in awarding seats to the sitting Senators? I ask him if he does not deem it unconstitutional, and is he willing to shield himself under the plea of *res adjudicata* to uphold an unconstitutional decision of this body? I inquire whether, in his opinion, the former decision was constitutional or unconstitutional? The "solemn decision," as Judge Bronson called it, in the Mississippi case, was afterwards reversed in the House of Representatives, by a resolution declaring in so many words that it should be rescinded; that Gholson and Claiborne were not elected members of the Twenty-fifth Congress; and in looking over the yeas and nays upon that vote, I find here in the Senate several gentlemen who were then members of the House of Representatives, and who voted to rescind that resolution. Both the Senators from Virginia then occupied seats in the other end of the Capitol, and both voted to rescind that solemn decision. The Senator from Maryland [Mr. PEARCE] also was a member of the House, and voted to rescind that solemn decision. The Senator from Tennessee [Mr. BELL] was a member of the House, and voted to rescind that decision.

These gentlemen not only thought the matter open to discussion, but, upon their constitutional oaths and duties, solemnly voted to rescind and annul a former decision, and to turn Claiborne and Gholson out of Congress, after they had been admitted by a solemn decision of the House, on investigation and examination. I appeal to them; I ask the Senators from Virginia and from Maryland and from Tennessee, will you now refuse to hear this case? Will you refuse to have it examined, when you gave a decision of this kind in a former case, acting, as you now are, under the obligation of an oath, and, as the Senator from Ohio insists, in a judicial capacity?

So, sir, this is no new question; but the cases

of Gholson and Claiborne, and of the sitting Senators from Indiana, are precisely analogous. No man can draw a distinction, so far as the question of *res adjudicata* is concerned, except the Senator from Ohio. He makes the distinction; and it is this: that the same men do not elect Representatives that elect Senators; and, therefore, a resolution declaring a Senator entitled to a seat is a finality, irreversible forever; but not so a resolution in regard to a Representative. In other words, that, whether a decision is a finality or not, depends upon the character of the constituents of the person about whom it was made. A wonderful distinction!

But, sir, the decision of last session cannot be conclusive on the claims of Messrs. Lane and McCarty, for the reasons which I gave the other day; and it will be but a repetition to go over them again. The resolution declaring the sitting Senators entitled to seats was not based upon any avowed principle. No reasons were given for it, as I said. It was a bare resolution; and the only way we have to ascertain upon what principles Senators decided is to look at the discussion; and when we look at that, we find that the Senators from Georgia and Louisiana made it a point in the argument, that there were no contestants; that the State of Indiana had not, through any of her departments, taken exception to the then claimants for seats. Now, that is changed. Now, Indiana, through her legislative department, the proper department, does take exception to their occupying seats; and she says in her memorial that they are not her representatives, but that Messrs. Lane and McCarty are her true and lawful representatives. If that was the controlling motive of Senators, the case is different, at once. They would not hear the men who objected before; and the Senator from Louisiana, in the height of his eloquence, declared that he would not listen to such men. Will he not listen, I ask him, when the sovereign State of Indiana, through her legislative department, calls upon him to do so? Will he not hear her? Is she to be denounced as traitorous, and her members as scoundrels? I think that will hardly be done. That was the ground taken a year ago in this body: that the State of Indiana was not then here, contesting the seats. The case is now different. Indiana is now here, through her proper department, and that changes the parties, according to the argument of the Senators from Georgia and Louisiana.

But, sir, other persons are now here. The gentlemen who have laid their credentials upon our table, which were referred to the Committee on the Judiciary, and have been reported back, were not Senators elect of the State of Indiana at the time when the question was taken upon the rights of the sitting Senators to their seats. They had not then been elected. They had no right then to claim seats. Their rights have arisen since, and could not have been passed upon, and could not be precluded by any decision made before then, or before the case arose which is now submitted for the consideration of the Senate.

I should not have taken up so much time, if the contestants had been allowed to present their own case. I am sorry that I have been compelled to discuss the question at all. I was for allowing the legally-constituted representatives of Indiana the right to come here and present their case; but the Senate refused that; and then, as the next best thing, I have endeavored to present it in my feeble way, without the assistance which we should have had if those gentlemen were here to argue their case. I am astonished that they are denied that privilege. In the House of Representatives, in the case to which I have alluded, Messrs. Prentiss and Word were admitted upon the floor of the House of Representatives, and argued their right to seats; and they had been elected after the decision in favor of Gholson and Claiborne, just as Lane and McCarty have been elected after the decision in favor of the sitting Senators. The cases are precisely analogous.

In this body, when a contest arose some few years ago between a sitting member and a claimant, the claimant was admitted upon the floor of the Senate, and allowed to argue his case, although the committee unanimously, I believe, reported against his right, and the vote of the Senate was unanimous against him. Such was the courtesy of Senators—although there was no difference of opinion in the Committee on the Judiciary, although they thought there was no question as to the right of the sitting Senator; and it was so clear that I believe there was entire unanimity in the body—still they heard the claimant. Here is a case where the committee is divided; where different opinions are known to prevail on different sides of the Senate; and yet, the claimants are to be turned away, and the State of Indiana insulted, by telling her that she has undertaken to revise the decision of the Senate. Sir, she has revised no decision of the Senate. She has but exercised her constitutional right to elect Senators, who are now here demanding seats to which, in my opinion, they have a clear and indisputable right.

Mr. SEWARD. Mr. President, when this question has been heretofore before the Senate, it was one in which I felt a considerable degree of interest. The subject involved the question whether the two incumbents of the seats from Indiana had been duly elected, and were justly members of this body—a question which, as I have had occasion before to say, is a question affecting the rights of the State of Indiana, a sovereign State of the Union—a question affecting the proper, legal, constitutional organization of the Senate of the United States. But still I was willing to let it pass without elaborate discussion or earnest remonstrance on my part, because it seemed to me, at the moment, to involve no more than I have thus described. I have not at all doubted that during the existence of the Government there has been more than one time in which more than one State of the Union has been represented in the Senate by persons who were not duly, legally, constitutionally elected. But, sir, in the course of this debate, the subject has assumed new and varied transformations. It is accompanied now by so many strange and extravagant propositions—propositions so dangerous to the constitution of this body, and to the rights of the States which are its constituents—that I cannot suffer the occasion to pass away without making, with what brevity I can practice, some observations in addition to those I have already submitted.

I am told by the honorable Senator from Delaware [Mr. BAYARD] that I have introduced many unconstitutional heresies into this body. Sir, time will soon determine whether what are called heresies to-day are not the sound constitutional principles of fifty years ago, and whether they will not be found fifty years hence to be true constitutional principles, and therefore enduring and everlasting. I submit my record to the public, with as deep a solicitude that I may stand right before my country and before posterity, as any other member of this body, or any person connected with this Government, can entertain. I impeach none of my cotemporaries. I abide their censures, not without self-distrust, but with composure. But I must be permitted to say, that in all my life I have never heard heresies so anti-republican, heresies so unconstitutional, heresies so dangerous, as those which this debate has called into being. Why, sir, we have sat here hour after hour, and have heard learned gentlemen of the law discuss the question of the effect of a resolution of the Senate by analogies derived from the practice and proceedings of courts of the common law. We have had analogies between the proceedings of the Senate and the process of *mandamus* in the State courts, together with parallels between our own resolutions and judgments, final and interlocutory, in the tribunals of other countries. We have heard the decisions of the Senate, made in the form of resolutions, pronounced by worthy lawyers to be in effect identical with judgments *in rem*, borrowed from the civil law. Because a judgment of *mandamus*, or some other final judgment, entered upon a record, instead of an interlocutory order, is, without some provision made for its review, held final in the courts, it is alleged, most illogically, that the resolutions of this body are final and irreversible.

Sir, when you have declared that the Senate has ever made a decision which was final and irrevocable, then you have ascertained one decision of this Senate that was infallible; and the body that has power to make one infallible judgment, has the power to make more. So each Senate may anticipate and usurp the functions of its successor. The principle, then, for which our assent is demanded, is, that the resolutions and orders of this Senate upon the subject of elections are infallible. Gentlemen tell us we must acquiesce, out of respect to the Senate; that we must submit, though we think they are wrong; we must not question them. They plainly tell us that it is disrespectful, it is contemptuous, on the part of the State of Indiana, to protest against a decision of the Senate as being unjust or erroneous; and we who maintain the appeal of Indiana are guilty not merely of discourtesy, but of contumacy.

No man entertains a more profound respect for the Senate of the United States than I do. No man will be found, I trust, less likely to do any act to impair its dignity, its character, or its just constitutional authority. Nevertheless, I deny absolutely that the Senate of the United States is possessed of such virtues and such wisdom, and that it can never err. I deny that there is any such constitutional principle in this Government as that the Senate or the House of Representatives, or any other legislative body, cannot err. On the other hand, I maintain that it is of the very essence of the principles of our whole republican system, that legislative bodies may err through want of knowledge, through want of wisdom, through want, even, of virtue; that they may act, and do often act, under the influence of passion, prejudice, ambition—ay, and sometimes even of corruption. The man who shall tell me that the time has arrived in this country when a State of this Union may not come to the Senate Chamber of the United States, and arraign the body itself, and charge it with infidelity to the Constitution, and with infidelity even to truth and justice, announces to me that the period has come when it is necessary for the people of this country to revise the action of the Senate, to review its conduct with promptness and decision, and to teach and instruct it that it is the creature, and not the creator; that it is the servant, and not the sovereign.

I am astonished at pretensions so extravagant and arrogant as this. I am told that the power to judge is given to the Senate for the protection of the body. The saying is most true; but the protection is sought, not for the dignity of the members who sit in its cushioned seats, on its carpeted floors, or for the dignity of its chairmen of committees, or its judiciary committees, or for anything personal in it, or about it; it is for the protection of the States, which are the constituents of the Senate, and of the liberties of the American people. Tell me not that your decisions are infallible; and that no power shall approach you, even to complain! I tell you, sir, that the voice of complaint, when stifled, in this or any other country, is the power that makes revolutions. You may strike in a despotim with safety, provided that you hear; but not even in a despotism is there a power that can safely strike the meanest subject, unless it listens first to remonstrance, and complaint, and even supplication.

To all these fine-spun theories about the dignity of the Senate, and the infallibility and finality of its decisions in the cases of contested elections, I have one short but conclusive answer. They all proceed on the ground that the Senate, in making such decisions, pronounces what is technically a judgment, and so exercises judicial powers. There can be no "judgment" pronounced anywhere that is not pronounced in the exercise of a judicial authority; and the power that pronounces a judgment is necessarily a judicial power. Now, sir, the Constitution of the United States defines the powers of the Senate of the United States; and it declares that—

"All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

There is no other grant of legislative power to the Senate, and no power whatever but in the short, simple sentence which I have read, which is given to the Senate of the United States, if we exclude the power to try impeachments, conferred in another article. The Constitution makes this purely a legislative body; the Constitution expressly excludes it from the exercise of all judicial power whatever; for it declares, in the first section of the third article, that—

"The judicial power of the United States shall be vested in one Supreme Court, and such inferior courts as the Congress may from time to time ordain and establish."

This, then, is merely a legislative body. It acts not as a court, it acts not judicially; but

always as a Legislature, and in the form of legislation. The argument that the resolution in the Indiana case is a judgment which must be submitted to and acquiesced in, even though it be wrong, is without the least foundation whatever in the Constitution. Mr. President, if we, if the Senate is infallible in this act, then in this case it exercises a power different in its nature, and different in its effect, from the authority which it exercises in passing laws. The Congress of the United States can pass no law today that cannot be repealed and rescinded tomorrow; and yet this principle which is claimed here, would be to invest the Senate alone with a power transcending that of the whole Congress of the United States. It is no sufficient argument against this view of the case, that it may work inconveniences in its exercise. There is but little ground for the argument of probable inconvenience presented in this case; for, after a period of seventy years, we are able to bear witness that, in all cases of fair hearing and resolution of contested claims in the Senate of the United States, there has been a uniform acquiescence; and that there has never been any considerable disturbance of the peace, the equanimity, the harmony, the order, of the Senate of the United States, by the agitation of contests about the seats of its members. This is either an extrordinary case, or else the passion of the hour has become wild and ungovernable; and if it be so, it will soon subside, and the anomaly will cease. It is not for me to undertake to say, now, how the matter stands in this respect.

Mr. President, I have declared that the Senate of the United States may err, and must err. In saying this, I say only what Charles James Fox said of the House of Commons, when, in a similar case, he protested against a judgment to exclude himself as an elected member of that body. He told the House of Commons of Great Britain, in which he was so long one of the greatest and most distinguished actors, that, like all other representative bodies, it was liable to err, through prejudice, through passion, through ignorance, through improper executive influences, and even through corruption. I do not say that this Senate, in the decision which has been rendered, has submitted to any such influences. I am claiming only the vindication of the principle for which I contend, namely: that its decisions are always open to review, and that the Senate never pronounces a final judgment upon anything. Sir, there was, in the year 1834, a Senate that was as strong in the majesty of intellect, as honest in the consciousness of virtue, as the present Senate of the United States. That Senate, on the 28th of March, 1834, adopted a resolution as solemn, and after a tenfold more learned and profound and elaborate debate than we have had here on the present occasion, in these words:

"*Resolved*, That the President, in the late executive proceeding in relation to the public revenue, has assumed upon himself authority and power not conferred by the Constitution and laws, but in derogation to both."

In the Journal of the Senate, on a day three years later, I find black lines drawn around that resolution with great care, and this entry made on the face of the original record:

"Expunged by order of the Senate, this 16th day of July, in the year of our Lord 1837."

Now, Mr. President, I bring my remarks to a close, by saying that I suppose and expect that I shall be borne down here, on this occasion; but I give notice, when this decision shall have passed, I shall follow the example of the precedent which was set in the interesting and celebrated case I have cited. I shall ask the Senate to allow me to submit to its consideration a resolution in these words:

"*Resolved*, That the resolution adopted by the Senate on the 12th of June, 1858, which resolution is in these words, to wit: '*Resolved*, That GRAHAM N. FITCH and JESSE D. BRIGHT, Senators returned and admitted from the State of Indiana, are entitled to the seats which they now hold in the Senate as such Senators aforesaid; the former until the 4th of March, 1861, and the latter until the fourth of March, 1863, according to the tenor of their respective credentials,' be expunged from the Journal; and for that purpose the Secretary of the Senate, at such time as the Senate may appoint, shall bring the manuscript Journal of the session of 1857-'58 into the Senate, and, in the presence of the Senate, draw black lines round the said resolution, and write across the face thereof, in strong letters, the following words: Expunged, by order of the Senate, this —— day of ——, in the year of our Lord eighteen hundred and ——."

I shall be in this Senate Chamber, if God spares my life, two years more; and at every session hereafter that I am here, I shall call for the passage of this resolution. When my time shall have come to leave the Chamber, as I trust to leave it with the good will and personal kindness of all my associates here, I doubt not I shall leave behind me some member who will insist on calling for the consideration of the same resolution, until a period not distant shall arrive, when the resolution in the Indiana case, which is now pronounced an infallible, final resolution, and for questioning which a sovereign State of this Union is denounced and adjudged to be in contempt, shall be reconsidered, and not merely rescinded, but expunged.

Mr. HALE. The honorable Senator from Missouri has made an appeal, and he asks us on this side of the Chamber, if he has not satisfied us of the entire difference between the case put by the honorable Senator from New York, in relation to the old General, and this case? I think he has; but I could give him a precedent older than that. There is a precedent that illustrates this difference, and it is in one of the oldest books that I ever read—Webster's Spelling Book. It is a case exactly in point, and illustrates the difference; and it was this. There was a farmer who once went to a lawyer for advice. He told him he wanted his advice upon a case something like this: "My bull has gored your ox." "Then," replied the lawyer, "you must pay me for it." "But," rejoined the farmer, "I recollect that it was the other way. It was your bull that gored my ox." "That," said the lawyer, "is a different case altogether." [Laughter.] The farmer said, "The case I first put, you decided without an 'if,' but when the damages are to come out of your pocket, you immediately interpose an 'if.'" The difference is, whose ox was gored? Now, in this case, when that expunging resolution was adopted, it was the Whig ox that got gored.

Mr. GREEN. On which side was the gentleman then? Was he the gorer, or the goree?

Mr. HALE. That was in 1834, was it not, sir? I was a Democrat, then, without respect to complexion. [Laughter.] The test of trying men by complexions had not been brought into the Democratic party then. A man was at liberty to believe, in the words of the Declaration of Independence, that all men were endowed by their

Creator with certain inalienable rights; and that had not been construed to read "all white men," up to that time. I think it was understood in the States of North Carolina and Tennessee, that "all men" meant all men, at that time. That was the way I learned my Democracy. I remember, upon that subject, hearing an honorable member from the State of Tennessee, and I hope I have the ear of Tennessee now—one of the most distinguished men that ever did come from that State—I mean until the present members came—I do not want to say anything disparaging to them. [Laughter.] I refer to Cave Johnson. I heard Cave Johnson say, on the floor of the House of Representatives, that the first time he was ever elected to Congress, he was elected by the votes of free people of color, in the State of Tennessee.

Sir, the honorable Senator from Missouri, as I said, has put this case, and asked us if we did not see the difference. I see it, and I think I have explained it, and answered the question which the honorable Senator put, candidly. Having answered that, I want to say what I would not have said if this discussion had not extended so long, that I look upon this as the Senator from Illinois looked upon it, as one of the gravest questions that can be presented to the Senate, or to the American people. I look upon this as a precedent by which the Senate have taken the first step in constituting themselves a body by which their own power is to be perpetuated, independently of the will of the Legislatures of the several States; and that is in substituting the bare will, the arbitrary will, of a party majority, to bring men upon this floor, not, in my humble judgment, entitled by the provisions of the Constitution to have seats here; and, under the sanction of that precedent, fortifying them in power.

The honorable Senator from Ohio, [Mr. PUGH,] to whom I always listen with pleasure, and, I hope, with profit, gets rid of this case very easily, by assuming it is no case at all. Well, sir, when he declared that it was no case, if he had added, "in my opinion," I would not have contradicted it; I would have admitted that he was entirely and totally correct; but when he leaves off that qualification, and undertakes to pronounce from his place, *ex cathedra*, that this is no case at all, he simply does what less able men than he sometimes resort to; and that is, as it is called by logicians, begs the whole question. If this subject can be decided by positive asseverations, by declaring that the case the contestants present is no case at all, it is very easy to decide any question that might be presented.

But, sir, let me make an asseveration, and I will put on the qualification; I will say, "in my opinion." I say, in my opinion, the sitting members here have no right at all on this floor, under the Constitution of the United States. Some of the honorable Senators on the other side of the Chamber, and I believe the honorable Senator from Missouri, assumed that it was right to expunge that resolution, because the Senate had no right to pass it; that they had no jurisdiction upon the subject; that it was a mere assumption of theirs, and no power was granted by the Constitution to the Senate to pass it. I say, by the very same reason, the Senate had no power to pass the resolution by which they gave the sitting members their seats on this floor. Why? Because, to give jurisdiction to the Senate to judge of the qualification of members, there must be an election by the Legislatures of the States. Those are the words of the Constitution; and if anybody comes here with credentials that do not upon their face purport to be from the Legislatures of the States, it is a case upon which the Senate has no jurisdiction at all. Granting to the Senator from Missouri all that he claims, in the remarks that he made, it is just as much of a usurpation on the part of the Senate to undertake to judge their qualifications, when they did not come within the words of the Constitution, as it was for the Senate to pass that resolution condemnatory of General Jackson for removing the deposits.

The honorable Senator from New York has given a pledge of what he will do. I confess that I never was much in favor of that expunging resolution. I did not think at the time, I do not think now, that that resolution can be reconciled with that provision which says the Senate shall keep a journal. If there was any meaning in it, it was an attempt to efface and expunge; but they did not efface, and did not expunge. It was simply an act of indignity to their predecessors—nothing more, nothing less. It was not what it purported to be. The resolution was not expunged, and it could not be. It would have been a violation of the Constitution to have done it; and it is a cheat to undertake to do what it could not do—to pretend to expunge, when it does not expunge. It stands there, nothing more nor less than an expression of indignity on the part of the Senate who passed the expunging resolution, against those who passed the original resolution. I thought it was wrong then, and I think so now, and I suppose I shall always think so; and, though I may not possibly be able to overcome these objections as to form, and prepare to follow the illustrious Senator from New York in exactly the track in which he walks, I will, if God spares my life, and I shall sit here six years, on every suitable and every fit occasion, and until the time arrives when the Constitution of my country can be vindicated, I will substantially aid him, by my vote, to give the men of Indiana sent here through her constituted tribunals the seats to which, I believe in my conscience, under the oath I have taken, they are entitled. I believe the Senate of the United States has no more right to choose Senators for the State of Indiana, than has the House of Representatives.

In 1848, when there was a schism in the Democratic party of this country, which resulted in the defeat of General Cass for the Presidency, amongst a great many things not so wise nor so well that a certain distinguished man said in that campaign, there was one thing which he did say, which, I think, ought to redeem his memory forever. I allude to a saying of John Van Buren's. He said it was as well to be sometimes *right*, as to be always regular. I think so. I think it is as well sometimes to be right, as to undertake to be always regular. I think that the great question of right is with these contestants. I believe that the great principle which lies at the very foundation of the organization of this body has been violated; and that it is palpable and apparent to the country and to the world that this Senate, in the exercise of power, (claiming at the time to be om-

nipotent, and now to be infallible,) usurped upon themselves authority not conferred by the Constitution, but in derogation of it. Sir, Indiana would have been craven and recreant, and the Legislature of that State would have been false to their constituents, false to the oath which they had taken to support the Constitution of the United States, if they had not at the earliest moment done what they could to vindicate her sovereignty, and her right to a representation through individuals chosen by the regularly-constituted organs of her Constitution to represent her on this floor.

The honorable Senator from Missouri complains that an attempt is made to make speeches upon this subject that are to go out and influence the public mind. Sir, I hope that it may have that effect. I confess that so far as I have any agency in it, that is the object and the end and the purpose that I desire. I believe that the rights of the State have been trodden down by the Senate, and I hope in God that the people of this country will arouse, that they will make themselves heard, and that they will make this omnipotent and this infallible tribunal, this American Senate, learn that there is a more omnipotent and a more infallible power even than this high body, and that is expressed by those much-abused words, popular will, popular sovereignty. I do hope, and I do believe, that the surges of an awakened public sentiment will beat against this Senate door, and that they will be heard. The day is not far distant when that resolution will be rescinded and repealed. The Senate cannot stand there. It is idle to think it. It is written in too plain letters upon the face of the Constitution for it to be blinked or winked out of sight. In a fancied moment of omnipotence, the Senate may have decided it; in an hour of fancied infallibility they may refuse to review it; but I tell you, sir, there is a power over all; there is a power before which omnipotence and infallibility, so long as they walk in mortal shape, must bend and bow in this country. If you silence us and vote us down, as I have no doubt you will, the only appeal that a violated Constitution can make, is to the common arbiter of the fate of us all—public opinion. To that tribunal this question must go; before that tribunal neither the plea of your omnipotence nor your infallibility will avail; but before that enlightened and that intelligent tribunal this question must be examined, and there will be a judgment pronounced to which even the Senator from Ohio must bow, if not with cordiality, with submission.

Mr. FESSENDEN. Mr. President, I did not intend to take any part in the debate; but I did take some part in the debate on the question of the right of the Senator from Iowa to a seat, and I do not like to stand in the position of having maintained that the Senator from Iowa was entitled to a seat because he had a majority of the votes of the members of the Legislature. That is the ground upon which the Senator from Ohio says we put it.

Mr. PUGH. I did not refer to the Senator from Maine. I referred to other gentlemen. I have read their speeches lately.

Mr. HALE. I never contended for any such thing.

Mr. FESSENDEN. I do not know that gentlemen on our side ever contended for any such doctrine. We might have said that he had a majority, but no Senator that I heard on our side of the House contended that, therefore, because he had a majority, no matter how the votes were given, he was entitled to his seat. We might have made that remark, but that anybody here made it a substantive ground, without reference to the manner in which that majority was obtained, I deny. I heard no such argument from our friends, and I do not believe any such was made by them. That ground was taken by the Senator from Georgia, [Mr. TOOMBS,] and he maintained the same ground in the case of the Senators from Indiana; but he was the only Senator who took that as a substantive ground on which to base his vote in the Iowa case. The distinction between the two cases is obvious. In the case of the Senator from Iowa, it was shown by the record, that each House, as a legislative body, a component part of the Legislature, had voted to form a convention at a given time and place, for the purpose of electing a United States Senator. The Constitution of the United States says the Senators shall be chosen by the Legislature; and we contended that the Legislature must act, as such, in relation to that matter in fixing the mode, as no mode had been established by Congress, which alone had the right to override its action; and that after, by proper legislative action, a convention was formed, that convention had power over the whole subject, and the withdrawal of no part of the members of it, unless they were so many that no quorum remained, would be sufficient to affect its action in any manner. That is the ground on which we put it; that is the ground against which the Senators on the other side contended.

The Senator from Louisiana [Mr. BENJAMIN] contended that there had been no legislative act in relation to that matter. He drew his argument from some provisions of the Constitution of the State of Iowa. He took the same ground in part that I did: that in order to make a legal election, there must be preliminary legislative action on the subject; and he argued that fully, and established that point to the satisfaction of everybody. It was argued also by the Senator from Connecticut, who was then a member of this body, now Secretary of the Navy, (Mr. Toucey,) that not only must there be preliminary legislative action, but a majority of each body must be present, or there was no election. That was the ground on which he put it, in the argument which took place in the Senate.

Now, sir, what is the distinction? In the case of the Senators from Indiana, there was no legislative action, there was not even a pretence of legislative action. The Senate of the State never took any action on the subject; it was never called upon to vote, and a majority of the Senate never acted upon the subject. There was no entry upon their journals in regard to it. They never had a proposition before them to elect United States Senators. But a minority of the Senate met, with a bare majority of the House of Representatives, not a quorum by the Constitution of Indiana, for another purpose under the Constitution, and proceeded to make an election at an adjourned meeting, without any reference to the Senate, or any legislative action on the part of the Senate.

There is the distinction between the two cases; and it is as obvious to any lawyer, it strikes my mind, as anything can possibly be. In one case, there was legislative action, making it the action of the Legislature of the State; in the other case, there was no legislative action at all; but, as my friend from Illinois designated it, the action of a mere assembly of men—to be sure, members of the Legislature, but that making no difference in the world.

We said, here is a precedent, a precedent set by the majority of this body, in the case of the Senator from Iowa. The Senator from Ohio has read from Chancellor Kent's Commentaries a passage, in which he says the action of the Senate in such cases is judicial. That means that they act as a body, having the right to settle the thing; that is all. Anybody will see, from reading the sentence, that he meant that they established a principle, when they acted, and their action must be considered as judicial, not with reference to the particular case, but with reference to the principle established, in order to promote uniformity in the decisions; that is, that what they establish at one time they shall not shrink from at another.

Sir, the majority of this body, by speech and vote, in the case of the Senator from Iowa, established that, in order to make a legal election. that election must be by the Legislature, under the Constitution; that an election by the Legislature, to be legal, must be preceded by, or attended with, legislative action under the Constitution. But, when this question of the Senators from Indiana came up, what did they do? Without a word, without a pretext, they repudiated the whole doctrine, and based their decision—for it is the only ground upon which they could put it—on the previous argument of the Senator from Georgia, that if a majority of a majority of the votes were obtained, no matter how, no matter where, no matter when, there was a legal election. They repudiated their former action as distinctly as it could possibly have been done, and as plainly as if they had said upon the record that they meant to abandon, in this case, the principle which they established in the other. It was obvious to every man.

Well, now, sir, that I am on my feet, let me allude to the case which is before the Senate in a few words; I do not design to argue it at length. How did it present itself in the first place? These Senators came here under this vote, which is pretended to be the action of the Legislature of Indiana under the Constitution of the United States. When they came here, a protest was presented from a majority of the Senate of Indiana; but they were sworn in. What was the first report made by the Judiciary Committee, to whom the matter was referred? That either party should be at liberty to take testimony. That was at a called session of the Senate, a year ago. Did those who protested ask for time to take testimony? The whole matter was on the record, it was stated to be on the record, so that no testimony could change it; there was no dispute about the facts. It was said, I think, in some papers presented in the name of one of the Senators from Indiana, that there was a dispute about the facts. On that, the Senate decided that the subject should go over from that time to the regular session. It went over; and what did the Committee on the Judiciary then do? They reported again that time should be granted to take testimony. Why had not the testimony been taken in the mean while? There had been a whole vacation when they could have taken it.

Mr. BENJAMIN. The Senator is mistaken, I think.

Mr. FESSENDEN. Not at all; I remember it very well.

Mr. BENJAMIN. The Committee on the Judiciary reported at the first session—there were but a few days left—a resolution for taking testimony. That was objected to, and the question was kept under discussion by the Senator from Illinois, so that we could not get to a vote on it. It remained there. There was no power given to take testimony in the vacation.

Mr. FESSENDEN. But could they not have done precisely what they did afterwards, which was simply to take affidavits? But I am coming to the action which took place in this matter afterwards. When we met at the next regular session of Congress, the same report was made by the Committee on the Judiciary. The contestants, or those who represented them here, said then, "Nobody asks for time on this side; the matter is all of record; the record shows all you will find, and this is a mere pretence to gain time." I will not undertake to say or to intimate that there was anything meant in that but what appeared on the face of it; but it was put off for weeks and months, those members retaining their seats here; and what was the result? Time was given to take testimony, at the request, not of those who contested the seats——

Mr. BRIGHT. Will the Senator allow me a moment?

Mr. FESSENDEN. Yes, sir.

Mr. BRIGHT. I have sat perfectly still, and have charged no gentleman with misrepresenting the facts, and I hope no one would do so knowingly. There cannot be found a line on paper from myself, showing that I ever asked a moment of time, or relied on anything else than the journal of the House of Representatives of Indiana.

Mr. FESSENDEN. I do not know how it was in regard to that Senator. Will the other Senator say the same?

Mr. FITCH. I think I did ask that testimony should be taken upon a difference of facts as alleged by the Senator from Illinois and myself, and the testimony justified my allegation. I expressly stated, at the subsequent session, that I had desired testimony at the first session because of the allegations of the protestants, not knowing at that time that my views of the facts, and the facts as I knew them to exist, were set forth in the House journal; but, being furnished with a copy of that journal subsequently, the other proof became a matter of secondary consideration, as the Senator from Maine doubtless knows I stated at the time. Yet depositions were taken, were sent to the committee, were read to the Senate, and had an important bearing on the case.

Mr. FESSENDEN. I shall not enter into a dispute with the Senator from Indiana as to the facts. I know what I am stating, and nobody can deny it. Time was requested; and on the very occasion when that time was requested, the journal of the Senate was here; all the papers were here.

But, sir, passing from that, we came back here, and the Senate passed the vote that it did, after debate, admitting these gentlemen to their seats. There was no report, no statement of facts, nothing upon which anybody could judge, except the statements that were made on the one side and the other in the Senate. There was not a regular case made up, as it has been usual to make cases up when information is desired by the Senate, especially when there are two sides to the question. The argument was had, and it was decided as I have stated. It was had upon a resolution; and it was adduced in that argument as a strong and material element—the Senators on the other side will recollect that they adduced it themselves—that there was nobody here properly to contest these seats; that we did not hear from the State of Indiana; that we did not hear from the Legislature of Indiana; that there was no contesting party before the court. That was an argument relied upon.

Well, sir, the Legislature of Indiana meets at the proper time under its Constitution. It takes warning from what has been said by Senators here in their arguments. It draws up its protest; it makes its statement; it petitions this body in respectful terms to hear it; it takes up the case, which had been dropped for want of a party, and says: "We are a party to this matter; we will ask the Senate of the United States, respectfully, to consider our petition on the subject of the Senators from the State of Indiana;" and, in order to make that valid and effectual, to show their view of it in case they should succeed, and the State of Indiana should be considered as not having been represented up to that period, they elected gentlemen to take these seats, if it should turn out that there was a vacancy in the Senate from the State of Indiana; and those gentlemen present themselves here, and submit their petition. They come here in a respectful manner; they present themselves with all the respect that is due to this body. Respectfully, and even humbly—that is to say, with all the humility which becomes a State, which is not meanness, but manliness—the Legislature of Indiana present themselves before the Senate, and say, "Our opinion is that we are not represented; and these seats are vacant, and we ask you to reconsider your action, and admit those whom we have elected to fill these places."

We are the supreme power; we direct our own proceedings; but, let me tell the Senator from Delaware, it is no answer to say that this cannot be reconsidered, simply because there is no power which can revise and correct our errors. On the contrary, I say, if there is no power which can revise and correct our errors, the more the reason why we should revise and correct them ourselves. The argument that is advanced by gentlemen on this floor comes to this: "We decide a question—and admit, for the sake of the argument, we decide it wrongly—in a matter entirely within our own jurisdiction, and over which we are supreme; therefore, because we are supreme, we have no right to correct that erroneous decision of our own." Sir, that is no argument addressing itself to the mind of any man.

If I believed, for a moment, that the Senate of the United States had no power to correct its own proceedings, in a matter exclusively within its jurisdiction, I should believe (to carry out a little further the idea of the Senator from New York) we were in a position to call for the action of the people to overlook them, to deprive them, or limit them in the exercise, of the powers which they enjoyed. Sir, we are liable to error. But it has been argued here, very gravely, and in fact the report of the Committee on the Judiciary puts it on that ground, that it is an insult to this body to suppose that it could make a mistake.

Mr. BAYARD. The report says no such thing.

Mr. FESSENDEN. It says no such thing in words; but that is the substance.

Mr. BAYARD. I believe it to be true, in fact, that it is a disrespect on the part of the State; I will not say an insult.

Mr. FESSENDEN. Then the argument is, that it is disrespectful to the Senate of the United States to suppose that it can make a mistake. I think it makes mistakes of one kind or another almost every day in the course of its action, some of greater, some of less consequence, and I have not hesitated to say so, sometimes, in my place in the Senate, in respectful language; and I do not know that any member of the Senate ever considered himself insulted by it, or that the majority, from whom I happened to differ, considered that I had been guilty of any disrespect to the Senate. How can it be argued—and it is put upon that ground—that, when the Legislature of Indiana comes here with respectful language, in a perfectly respectful manner, and requests the Senate of the United States to reconsider its opinion because the State of Indiana considers itself aggrieved, that is disrespectful? On what kind of eminence do we stand, what kind of meat do we feed on, that we cannot be approached respectfully by a sovereign State of this Union, and requested to reconsider our action in a matter of vital importance to that State? It is a new idea. The Senator who stands at the head of the Judiciary Committee differs entirely from his colleague, the Senator from Ohio. He says that the proper mode of approaching this question would have been by petition alone; but the Senator from Ohio, in his argument, said they had no right to petition on the subject at all; that they had no power to petition.

Mr. PUGH. Where does the Senator gather that?

Mr. FESSENDEN. From what you said.

Mr. PUGH. I say the pretence that this petition is the act of the State of Indiana is all a sham. The Constitution of the State of Indiana does not constitute her Legislature a petitioner.

Mr. FESSENDEN. That is it, exactly; that, inasmuch as the Constitution of Indiana had not constituted her Legislature petitioners, therefore they had no right to petition on this subject. On the contrary, the Senator from Delaware says the proper mode would have been by petition alone.

Mr. BAYARD. Will the honorable Senator allow me to explain?

Mr. FESSENDEN. Certainly.

Mr. BAYARD. I said that the disrespect was involved in the attempt to elect in the face of the judgment of the Senate. I neither said, nor intimated, whether they had or had not the right to petition. If a State chooses to petition or to memorialize the Senate on any subject-matter, I

am willing to consider her memorial. The disrespect was involved in the act of election, not in memorializing; and on that memorial I arrived at the conclusion the committee did—that the subject had passed from the further action of the Senate by the judgment rendered at the previous session.

Mr. FESSENDEN. The committee have made no such decision. The conclusion they came to is, that the matter is settled, and they will not rehear it. The reason given for it by the Senator from Delaware—and I think it is so stated in the report—is, that the Legislature of the State of Indiana had undertaken to revise the decision of this body. Suppose they have elected Senators: their election of Senators does not make them so. They have a right to express their opinions, and they may express them in that way as well as in any other. If the seats are filled, the election goes for nothing. Is that disrespect? They do all that the Senator suggests; they present their petition. It is couched in respectful language. What does the Senator say? "I will not consider your respectful petition, because you have done an act which is an offence to the Senate of the United States." Sir, is that an argument?

Mr. BAYARD. I did not say that at all.

Mr. FESSENDEN. The Senator did not say it; but that is the legitimate result of his argument.

Mr. BAYARD. No, sir. We did not consider their petition; because we decided that, the case having been disposed of, the petition could not be maintained.

Mr. FESSENDEN. But what is the conclusion he comes to? We ask that these gentlemen may be heard; we ask that the State of Indiana may stand before us by its own representatives. The State of Indiana asks it through them. This is a courtesy which has never in any case been denied before. Those who have been selected as Senators or Representatives from a State, have always been allowed to appear before the body, and state the grounds upon which they claim seats. When we ask this customary privilege for these gentlemen, what is the answer that is made? That they shall not come inside of these doors. Sir, we asked for the State of Indiana simply the ordinary courtesy which might have been extended to two gentlemen whom that State chooses to consider her Senators, that they might be admitted on this floor until this question is settled; might be permitted to sit upon these sofas, and not sent into the galleries, or elsewhere. That was received with contemptuous indifference and denial—even that. Then, when the State of Indiana, through its agents, goes a little further, and respectfully requests that these gentlemen may appear and state the grounds of the claim of that State before this august tribunal, the same answer is made: "you have treated the Senate of the United States with disrespect, and we cannot permit you to come here and show even that this question has not been decided."

Now, sir, I have been betrayed into speaking much more upon this subject than I had any idea of doing. I do not propose to review the question itself; that was argued fully before; but I cannot avoid alluding in some degree, in as few words as I can use, to what I consider the contradictory ground upon which gentlemen have been compelled to place, what is manifest to me, a determination that this matter shall not even be presented fairly before the Senate of the United States. How much difficulty we have had in presenting the matter at all. Did Senators suppose that, after repeated efforts, we had not the power in any possible way to get the subject before the Senate and before the country? The Senator from Missouri seems to think that we are committing a grave fault, or that my friend from New York was speaking language that might have an effect upon the people of Indiana. Sir, no day passes, as Senators well know, that language of that description is not used on this floor by somebody, in relation to something; and certainly, when a State considers its honor and its rights involved, it is difficult for any Senator, in addressing this body, to use language which may not have an effect to show either that it has been injured, or has not been. One side or the other of that question is inevitable. I believe that nobody here can justly accuse me of ever talking much for the sake of outside effect upon anybody. I endeavor to address myself to the questions before the Senate; but, sir, I am willing now to express my opinion, and, like the Senator from New Hampshire, I give it only as opinion; I considered the decision of the Senate, at the time it was made, as in utter defiance of the rights of the State of Indiana. I considered, then, that the two gentlemen admitted to seats on this floor had no more right here than any other two men who could be picked up from that State, or any other, and came here claiming seats; but, at the same time, I knew that the decision, if made, would be adhered to. My opinion may be wrong, but it is satisfactory to me. I mean no disrespect to gentlemen when I express it; I impute improper motives to no man. Such was my opinion of the decision itself, and I have not changed it. When a State comes here, having acted legally through its Legislature, having shown the regular legislative action, and sent its men, and requested simply that they might be heard before the State was judged, I think it is dealing a hard, a harsh, a contemptuous measure to a sovereign State of this Union, especially on the part of those who claim to be the especial champions of State rights and State sovereignty, to say that they shall not be heard here because this question has been decided when they, according to the arguments of gentlemen, were not even a party to the decision that was made.

Mr. HARLAN. Mr. President, I shall occupy the attention of the Senate for but a few moments in relation to the history recited by the Senator from Louisiana. I think he errs greatly in supposing that the Democratic party, as a party, has ever condemned the doctrine that one branch of a State Legislature has the right to defeat the election of Senators to the Senate of the United States. At least, the Democracy of Indiana have never taken such a position. At the session next preceding the one of which the Senator from Louisiana complains, the Democratic majority in the Senate refused to unite with the Republican majority of the House to elect a United States Senator; and thus defeated the election for two years, leaving the State with but one representative on this floor.

There is another case from that State, which I must be indulged in reciting. The senior Senator from Indiana [Mr. BRIGHT] was, a few years since, at the legislative session of 1844–'45, President of the Senate of Indiana, being at the time Lieutenant Governor. The Whigs had a majority in the House of Representatives; and in the Senate the Whigs and Democrats were equally divided. On a motion made in the Senate to unite with the House of Representatives for the election of a United States Senator, the members were equally divided—the Whigs voting for the joint convention and the Democrats against it. The honorable Senator from Indiana, [Mr. BRIGHT,] as Presiding Officer, gave a casting vote in the negative, and defeated the election. The election of Senator went over until after the election of a new Legislature; which, having a majority of Democrats in both branches, held an election. The honorable Senator, then Lieutenant Governor, was the successful candidate, and thus reaped the fruits of the very rebellion denounced by the Senator from Louisiana.

Mr. BENJAMIN. Will the Senator permit me a word?

Mr. HARLAN. Certainly.

Mr. BENJAMIN. However I may disapprove, I did not reprobate the conduct of any gentleman who, in a State Legislature, chooses to vote against going into an election. The conduct I was animadverting upon was the attempt to overawe the Senate of the State of Indiana by armed force.

Mr. HARLAN. In that I would agree most heartily with the Senator from Louisiana, and would have agreed with him had he made the statement much broader. As an original proposition, in my judgment, the members of one branch of a Legislature, being in an accidental political majority, ought not, by a factious opposition, to defeat the election of Senators to the Senate of the United States by the majority of the members of the two branches; but I am now merely reminding Senators of the history of the Democratic party on this subject, for the purpose of showing how far this implied denunciation of the Republicans in Indiana, by Democratic Senators here, is just. When I first became a member of the Senate of the United States, there was but one Senator here from the State of Missouri. One seat was vacant. When the vacancy occurred, the two branches of the Legislature of that State, in consequence of a political difference, were unable to agree to elect a Senator. There was but one Senator on this floor at that time from the State of Pennsylvania, from a similar cause; but one from the State of California, from a similar cause; and I am reminded that there was but one on this floor from Indiana; but to that case I have previously alluded.

Mr. GREEN. Let me correct the Senator. In the case of Missouri, there was no disagreement between the two Houses; but after they went into a joint convention, they could not give a majority of votes for any one.

Mr. HARLAN. That may be so as to the case; but, as I understood the case at the time, the failure to elect was in consequence of political differences of opinion between the members of the Missouri Legislature. They were unable to perform a constitutional duty, because they could not agree politically. But, sir, I have another case in point. The State of Iowa, after having been admitted into the Union as one of the members of the Confederacy, was unrepresented on this floor for two years; and that, too, in consequence of a refusal on the part of a Democratic Senate to unite with a Whig House in the election of Senators. At the first session of the first Legislature of the State, the Senate and House met in joint convention to elect two United States Senators. On the first ballot, it became manifest that the Whigs would be able, probably on the next vote, to elect their nominee, Mr. Jonathan McCarty, who opposed Augustus C. Dodge, my immediate predecessor. The Senate arose in a body, and was on the point of leaving the chamber; but some one making a motion to adjourn, the joint convention was dissolved, and the Democratic Senate returned to its chamber, and thenceforward persistently declined to unite with the House. Two years afterwards, both branches of the Legislature being Democratic, my predecessor and also my colleague [Mr. JONES] were elected.

I cite these cases, and I might mention others, for the purpose of showing that the Democratic party initiated the policy of defeating the election of United States Senators when their opponents were a majority of all the members of a State Legislature, but in a minority in either the Senate or the House; and they have been uniformly sustained, I believe, by the party. At least, the right of a Democratic Senate, or a Democratic House, to defeat the election of United States Senators by their opponents, when in a majority, if in joint convention, has been uniformly defended by their leaders on the stump, in legislative halls, and, generally, even on this floor. They have never repudiated a member of their party on that account. The Senator from Indiana is an illustrious example of success gained by initiating and pursuing this policy; for I think the very first case that ever occurred was initiated by the senior Senator from Indiana. I am not willing that those with whom I act politically shall be denounced for having, in one or two cases, followed the precedents set for them by their political opponents. It seems to me, at least, that it is unfair for Democrats to arraign Republicans for doing the very thing which they, by their official acts, say is right, and which some of them defend on constitutional grounds. They say that the power to elect Senators is vested in the Legislature of a State; that where the Legislature is composed of two branches, the responsibility equally belongs to each branch; and if they choose to be unrepresented in the Senate of the United States, they have a right to refuse to elect Senators. But whether this be defensible or not, it seems to me to be unfair for Democratic Senators to arraign their opponents on this ground, as having acted improperly, as a reason for maintaining the former decision of the Senate of the United States. If that decision can be defended, let it stand on its own merits, and not on the supposed wrongful act of others.

Now, sir, what is the question presented to the Senate? The Legislature of Indiana, after having examined her own record, ascertains, as she alleges, that she is unrepresented on this floor by members elected by her votes as "a Legislature." There may be gentlemen here claiming

to represent Indiana, elected by individual members of the Legislature; but planting themselves upon the very ground laid down by the distinguished Senator from Louisiana in the case from Iowa, the Indiana Legislature maintains that that was not the act of "the Legislature." I doubt not the honorable Senator will remember the point presented so pertinently, as I thought at the time, by him, by antithesis, in my case. He read from the Constitution of the State of Iowa the provision declaring that the legislative power of the State should be vested in a Senate and House of Representatives; and then from the Constitution of the United States, the provision that the Senate of the United States shall be composed of Senators chosen in each State, "by the Legislature thereof," thereby demonstrating, from the text of the two Constitutions, that the election of Senators to the Senate of the United States was, in his opinion, the act of "a Legislature," if not a "legislative act." He argued, then, that no election to the Senate of the United States could be valid, not made by a Legislature; and that where composed of two branches, it required the distinct act of each branch of that Legislature. He united and read as one paragraph the provisions of the Constitution of Iowa and the Constitution of the United States:

"The legislative authority of this State shall be vested in a Senate and House of Representatives, which shall be designated the General Aasembly of the State of Iowa. The business of this legislative authority is to pass laws, and to elect a United States Senator. A majority of each House shall constitute a quorum to do business."

And then argued:

"Now, sir, if it be in part the business of the Legislature of Iowa to elect a Senator to the Congress of the United States, then it cannot elect that Senator under the terms of the Constitution of the State, unless there be present a quorum of the two Houses. In the case at bar, it is admitted on all hands that there was no quorum of the two Houses. The Constitution provides explicitly that the Senator shall be elected by the Legislature. The Constitution of Iowa provides that the legislative power of that State shall be vested in a Senate and House of Representatives. The Legislature of every State has the power of determining the time and place and manner of electing Senators; but, in so determining, it appears to me they must do so in subordination to the express direction of the Constitution of the United States. They cannot determine that the election shall be held at such time and in such manner as that it shall not be held by the Legislature." * * * "When that convention fails to be a convention of the Senate and House of Representatives, it no longer has the legislative power of the State of Iowa, and is therefore not such a body as, under the terms of the Constitution of the United States, can elect a Senator."

In the case from Iowa, which is in some respects similar to this case, it was maintained by the now chairman of the Committee on the Judiciary, [Mr. BAYARD,] that the Senate of Iowa, as a Senate in its organized capacity, had never agreed to the decision of the joint convention; that it had agreed to form a joint convention; had met with the House of Representatives repeatedly, and voted; but that, when the election took place, the Senate was not present as an organized Senate, and hence could not agree to the act of that joint convention. He said:

"On this state of facts, the question which I suppose to arise is, whether 'the Legislature' of a State, under the language of the Federal Constitution delegating to the Legislature the right to elect Senators of the United States, is to be taken to mean the individual members of the Legislature, or the body or bodies of which the Legislature is composed. I suppose the term, as used, means the bodies of which the Legislature is composed." * * * "They must both be present and act in the matter, or there can be no validity in the act done."

Other Senators, learned in the law, were as explicit. Mr. Toucey, then a Senator on thi floor, said:

"The question involved in this discussion is simply this Was the Senate of Iowa present in the Hall of the House Representatives when this alleged election took place?"

Mr. Douglas said:

"Now, let me ask, how was the Senator from Iowa elected—by a Legislature composed of two branches, with a majority of each present, constituting a quorum? If not, he was not elected by the Legislature of the State of Iowa. There could be no Legislature without the presence of a quorum each branch."

Mr. Geyer, then a Senator from Missouri, said

"It is a convention of the two Houses, and not a convention of the members of two Houses. They meet together and when they vote together both Houses are present, giving their sanction to the act. The Legislature of the State, therefore, makes the appointment, being represented by all the branches of the Legislature."

This was the controlling point in the Iowa case There was no other defect. The Senate of Iowa was not present as a Senate. Nor was this controverted by the Republican members of thi body. It was admitted that both branches of the Legislature must acquiesce in the election, t render it valid. But they contended that the Senate had agreed to the election; had united with the House in the formation of the joint convention; had met with the House from day t day, and then had no power to dissolve the convention under the laws of the State, and defea an election, by the mere withdrawal of a majority of its members.

In the case from Indiana, is it pretended tha the Senate of Indiana ever agreed to the election of the sitting Senators? No one has maintained this in the argument to-day; nor was it contended in the argument of the case originally. It i admitted, on all hands, that the Senate of Indiana as a Senate, never did agree to the election o the sitting members. Consequently, as the Senate has a power equal to the power of the House, n election took place by "the Legislature of Indiana." The Legislature of Indiana to-day plants itself on the argument of the distinguished Senator from Louisiana, the distinguished Senato from Delaware, and other distinguished Senator on this floor, that an election, to be valid, mus be the act of the Legislature, as such, and no the act of the separate members of the Legislature. It must be the act of the Legislature—tha power constituted under the Constitution of th State as the Legislature—and not the act of th distinct and separate elements of the legislativ body.

Who, then, is inconsistent? The Republican in the Iowa case voted to sustain the election because they believed that the Senate of tha State, having agreed to unite with the House i joint convention, having formed that joint convention by its own deliberate act, in pursuanc of a law of the State, could not dissolve it by th mere absence of a majority of its members, o render its acts void by mere inattention to it business; but in the case from Indiana, there i no pretence that the Senate of that State eve did agree to this election. As was stated by th Senator from Illinois, the Senate of Indiana, understanding that an attempt would be made t elect United States Senators in an informal an irregular way, adopted a resolution, and spread it on its journal in advance, notifying the House of Representatives and the world that the Senat had not agreed to become a party to a joint convention for any such purpose; and after the elec

tion had been held, by less than a quorum of the members of the House, and a minority of the Senate, the Senate protested against its validity, and laid that protest on your table, demanding that the sitting Senators should not be admitted to seats as Senators from Indiana. The protest was disregarded. The applicants were admitted temporarily to seats. The protest and their credentials were referred to the Judiciary Committee, and many months thereafter the parties were authorized to take testimony. In the mean time the Legislature had adjourned; the protesting Senate was resolved into its original elements, and dispersed; there was no longer an official Senate, capable of acting, in existence. The sitting Senators collected testimony. The Judiciary Committee heard this *ex parte* history of the election, reported in their favor, and the Senate confirmed the decision of the committee. But, in the process of time, the Indiana Legislature is again convened. The journals of the proceedings of their predecessors are examined, and they find by their record that no legal election of United States Senators had been held, to fill the vacant seats. The Legislature of Indiana, legally assembled, by a concurrent vote of both branches, memorializes the Senate of the United States, and alleges that no legal election of Senators had been held at the previous session; that the seats then vacant are still unoccupied by legally-elected Senators; they hold an election, according to the laws and usages of the State, and forward their memorial to the President of the Senate, and ask to be heard at your bar; and the Republican Senators are willing to hear her own argument of her own case.

I have but little patience with the idea that this is an insult to the Senate; that the approach of one of the sovereignties, of which this Confederacy is composed, to the Senate, in a respectful manner, by her memorial, properly authenticated and directed to the Presiding Officer of this House, with a request to be heard as to the legality and validity of her own act, is an insult to the Senate of the United States! It is, in effect, saying that it is disrespectful to the Senate of the United States for the Legislature of Indiana, the electoral college, to assert that it had not previously acted in the premises. When it examines its own record—and it is bound by the Constitution of the State to keep a journal of its proceedings—it finds that no election, according to the Constitution and usage of Indiana, has taken place; and, finding the seats vacant, according to its own record, it proceeds to fill them; it elects Senators; it furnishes the Senators elect with credentials. With these credentials of an election by the Legislature of a sovereign State, they appear at the bar of the Senate, and ask to be admitted as its legal representatives. The Legislature, learning that two gentlemen had previously been admitted to seats as Senators from that State, during its recess, precedes these Senators-elect by a memorial, giving in detail, as I understand—though the committee has not favored us with a report on the allegations of this memorial—a history of their own action in the premises, and also a history of the election of the sitting Senators, and allege that the supposed election was not the act of the Legislature of Indiana; that, when the supposed election took place, the Senate of Indiana was not present; that a quorum of the House was not present; that the act was unauthorized, and not binding on the State. No other power on earth could elect United States Senators for Indiana, but its Legislature! These seats were vacant, when the Legislature was previously last in session. No election was held by the Legislature. Hence these seats must be still legally vacant, and they elect gentlemen to fill them.

In what consists the disrespect? By her own record the Legislature of Indiana knew when vacancies in this body, from that State, occurred; by her own record she knew that no election had been held. By her own record she knew that these seats were still vacant. She proceeds to fill them; sends gentlemen here with certificates, and memorializes the Senate, calling its attention, through its Presiding Officer, to the facts in detail, which she regarded as a violation of her sovereignty.

I cannot perceive, in this whole procedure, a single element of disrespect to the Senate of the United States; and if these gentlemen are to be spurned from the Senate Chamber, are not permitted to enter its portals, as other Senators elect, it will be an uncalled-for indignity to one of the sovereign members of this Confederacy. They have a right to be heard. They have a right to demand it in the name of a sovereign State. They have a right to demand by what authority this Senate sets aside her own interpretation of her own laws, and denies her even a hearing at its bar. I understand that the Supreme Court of the United States will not overrule the interpretation of the laws and official acts of a State, as construed by its own supreme judiciary. Harmony among the members of the Confederacy requires that the judicial construction of the official acts of each by its own tribunals shall stand. The highest Federal court known to the Constitution will not disturb such a settlement. And here is an adjudication by the Legislature of Indiana of an act of the Legislature of Indiana. Indiana interprets her own act differently from the interpretation placed on it by the Senate of the United States. The Indiana Legislature says that she did not elect the sitting Senators. This Senate says that she did elect them—that this Senate has examined the case, and solemnly decided that she did. Here is the issue joined between the Senate of the United States and the Legislature of Indiana; and Indiana asks to be heard at your bar on this issue. She asks you to cease to be advocate, and be the judge. She asks the privilege of arguing the question whether she is estopped by your act. She asks whether the records of this Senate or the records of her Legislature are the better evidence of what the Legislature has done.

If your decision was a legislative act, it is admitted, you could review and rescind. But it is said to partake of the solemn nature of a judicial decision by a court of the last resort, from whose decision there is no appeal. But no appeal is demanded; no change of venue is asked. You are only asked to review your own adjudication, for cause alleged at bar. The defendant has never had his day in court. How could the highest courts of the country bind a party to a suit, unless in the nature of a suit *in rem*, who had never received legal notice? How would you bind a minor unrepresented? How could you

conclude a party under legal disability to receive notice, or to respond, and bar a motion, on his part, to set aside a judgment, if made in reasonable time after the legal ability returned, or was acquired, to make an appearance?

You directed testimony to be taken in this case, during the recess of the Indiana Legislature, and gave notice by publication; you made your decision when it was legally incompetent to receive notice and to act. At the first session thereafter, as soon as she possessed legal ability to notice your adjudication, she makes her appearance by memorial, and by her Representatives, and moves for a rehearing. What is your response, by your judicial organ? "That she is forever barred by your *ex parte* adjudication!" so effectually barred, that you will not entertain a motion for a rehearing! so effectually barred, that you will not suffer her to make the motion, nor hear her on the question of her right to make the motion! And this on the ground that your decision was "judicial in its nature!"

It seems to me to be an act of courtesy due to the claimants, an act of justice to the State of Indiana, and a duty which the Senate of the United States owes to itself, as the most dignified and august legislative tribunal of the nation, to so far reopen this case as to hear the parties who represent the State in interest. And I array the argument presented by the honorable Senator from Louisiana, "that our votes are too likely to be controlled by our political opinions," though introduced by him in a different connection, as a controlling reason for this position. It should be a grave consideration with the majority, whether they have not prejudged the case through prejudice. The applicants are your political opponents. The case has been referred to a committee composed largely of political opponents, with whom it is possible that political dislikes may have given a perverted or distorted coloring to the facts and law of the case. The sitting Senators are your political friends. You have much to lose by displacing them, and admitting the more recent claimants. It may materially affect the political organization of the Senate to make a change of four in its political complexion. This might especially weigh materially with a majority that is rapidly waning from other causes. Hence, if you would act justly, it is due to yourselves that you should extend every opportunity to the claimants to throw light on the subject, that your minds may be disabused of any possible party bias against them. All these considerations appeal strongly to the majority to allow them to be heard on the merits of the case, but especially on the question of their right to a rehearing; whether a motion for a rehearing, made by the Legislature of a State, affecting the legitimacy of its representation on this floor, will lie before this tribunal; whether such a motion can be entertained. If you are sitting as a court, you certainly will not dismiss the motion without a hearing. A party making this motion in a court of justice would hardly be spurned from its presence unheard. His motion would be entered; his allegations would be heard; and if, in the opinion of the court, the allegations are sufficient, issue is joined, and, if sustained, the case is reopened, and the parties are then heard on the merits.

In this case, you say you sat as a court; from your decision there is no appeal. Then the only possible mode of correcting an error in this court is by a review of its own decisions by itself. If it possesses no such power, it is unlike any court of original jurisdiction that ever existed. But if it cannot, why not? It is not prohibited by any law of Congress; it is not prohibited by the Constitution; by it, plenary power is conferred to judge of the qualification, returns, and election, of its own members. It is not prohibited by public policy; justice to any one of the thirty-three sovereign States may at any time demand it; and a denial is in the nature of a reward for temporary success obtained by fraud.

But, if it is possible for allegations to be made sufficiently strong to justify a rehearing in any case, do they exist in this?

The Legislature of Indiana alleges that no election to fill vacancies existing two years since has been held by it, until Messrs. McCarty and Lane were chosen, a few weeks since. Is this sufficiently strong? If true, no act of yours could, by possibility, fill these seats with legal incumbents for the Constitution provides, "that each State shall be entitled to two Senators, to be elected by the Legislature thereof." If the sitting Senators were not elected by the Legislature of Indiana their supposed election is void, and the claimants are entitled to their seats. This allegation has been made by the proper party, and it has been made at the first moment after your decision that it possessed the legal ability to make its appearance at your bar. Then why not permit them to be heard? On what principle of law or equity or public policy will you exclude the hearing?

I cannot exclude a sovereign State from a hearing with such allegations by her Legislature. By this declaration I intend no disrespect to the honorable gentlemen from Indiana now occupying seats on this floor. They both know that none other than the kindest relations exist between them and myself; but, as a member of this body I never will deny a State the right to be heard here by legislative memorial or by her representatives whom she commissions and sends here as members of this body. Had not these seats been preoccupied by gentlemen purporting to represent Indiana in the Senate, the credentials presented by Messrs. McCarty and Lane would have entitled them to be sworn at once as Senators. No one doubts it; but with those full credentials from a sovereign State, backed by a memorial of the Legislature declaring that the incumbents were never elected by the Legislature of the State, you propose to deny to them the ordinary courtesy which has never before been denied to an applicant for a seat in either branch of Congress; you propose to deny them the right to be heard and also to exclude them from the portals of the Senate Chamber. They come with credentials as full and complete as any member of this body ever presented at your Secretary's desk, and they are thrust aside on the poor plea that the Senate is now full, by an act of the Senate itself; on the ground that there are no vacant seats, though the Legislature of Indiana alleges that the incumbents were never elected by her act. It seems to me that every principle of magnanimity, of courtesy, of justice, of duty, and of public policy, conspires to induce the majority to permit this case to be reviewed, and to allow these gentlemen to be heard.